IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Cri. Application No. 2128/2006 in
Criminal Appeal No.155/2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	:	Court's or Judge's orders

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CORAM : D.S. Zoting & A.P.Lavande, JJ.
DATED :4th September, 2006

Heard Mr. Kilor, learned counsel for the applicants and Mr. Deopujari, learned A.P.P. for the non-applicant/respondent.

The applicants have been convicted and sentenced for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code to undergo imprisonment for life and they have been further convicted and sentenced for the offence punishable under Section 326 read with Section 34 of the Indian Penal Code to undergo imprisonment for one year and to pay fine. The applicants have preferred Criminal Appeal against the order

of conviction and sentence passed by the trial Court. Their appeal has been admitted. They have filed this application for suspension of sentence and for grant of bail as per Section 389 of the Code of Criminal Procedure. The murdered man was one Bapurao. The complainant Kautikrao is the son of deceased Bapurao. There are three more witnesses namely PW 6 Awchit Raut, PW 7 Santosh Devkar and PW 8 Eknath Kale. The conviction is based on the ocular evidence of these four witnesses; so also the circumstantial evidence in the nature of discovery as per Section 27 of the Indian Evidence Act and the medical evidence given by the Medical Officer, who conducted the autopsy on the dead body of Bapurao. Mr. Kilor, learned counsel for the applicants submits that the applicants were on bail during the trial and they have not misused the bail. He further submits that the names of eye witnesses who have been examined in support of the prosecution case are not mentioned by the complainant in the F.I.R.

He further submits that the persons whose names are mentioned in the F.I.R. are not examined by the prosecution. He further submits that the Medical Officer has not opined that the injuries sustained to the deceased Bapurao are sufficient in the ordinary course of nature to cause death. He has further submitted that the applicants also received injuries and the prosecution has not explained the injuries on the persons of the accused. He further submits that the evidence of the witnesses appears to have large number of contradictions and in all these circumstances the trial Court is not justified in relying upon the evidence of the witnesses to convict the applicants for the aforesaid offences.

As against this, Mr. Deopujari, learned A.P.P. has fully supported the impugned judgment and submits that there is ocular evidence given by four witnesses including the complainant who is the injured witness and as such his evidence is natural which finds supports in the evidence of

other witnesses.

We have gone through the judgment passed by the First Adhoc Additional Sessions Judge, Buldana. According to the prosecution evidence, deceased Bapurao intervened in the quarrel which was going on between the applicants and Kautikrao (PW 5). At that time, both the applicants assaulted the deceased by iron pipe and the axe, as a result of which he sustained injuries and he died in the hospital on the same day. It is to be noted that the Medical Officer noticed the injuries on the head and chest of the deceased. It is also to be noted that the complainant PW 5 Kautikrao also received grievous injuries. Kautikrao has given details about occurrence and stated how he and his father received injuries caused by both the accused. His evidence finds full support in the FIR lodged immediately after the incident. The evidence of complainant further finds support in medical evidence as well as direct evidence given by PW 6

Awchit Raut, PW 7 Santosh Devkar and PW 8 Eknath Kale.. Thus, there appears ample evidence on record to show involvement of these applicants in the commission of the crime under Section 302 as well as Section 326 read with section 34 of the Indian Penal Code. It is to be noted that the direct evidence further finds support of circumstantial evidence in the form of discovery in respect of the pipe and axe. The contradictions as pointed by the trial Court are the minor contractions. Considering the nature of the evidence brought on record, we find that the trial Court, prima facie, justified in relying upon the direct evidence as well circumstantial evidence to convict both the accused for the aforesaid offences and as such, we find that this is not a fit case for suspension of the sentence and grant of bail. The application is rejected.

JUDGE JUDGE

A.